IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO.4579 (MS) OF 2001

Old No. 3351/86

City Board Dehradun,
Through its Health Officer. .....Petitioner.

Versus

1. Bhim Singh, S/o Shir Nandi Singh,
   52, Subhash Road, Dehradun.
2. Controlling Authority under the Payment of Gratuity Act-cum-Deputy Labour Commissioner, Garhwal Region, Dehradun.
3. Appellate Authority-cum-Commissioner, Kanpur.
4. Union of India, through Secretary, Ministry of Labour, New Delhi. .....Respondents

Dated: 24.08.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Ashish Joshi, Advocate for the petitioner and Standing Counsel for the Central Government.

2. By the present writ petition the petitioner has prayed for a writ of mandamus directing the respondent no.2. not to enforce its Notification dated 08.01.1982 published on 23rd January, 1982 U/s 1 (3)(2) of the Payment of Gratuity Act.

3. Briefly stated, the petitioner is a statutory local body under the U.P. Municipalities Act, 1916 and the respondent no.1 was employed as a Driver by the petitioner in its Health Section in the year, 1944 and he retired from the

employment of the petitioner on 31.08.1983. He drew his last wage to the extent of Rs. 737.30 per month.

4. According to the petitioner, the service conditions of the employees are being governed under the provisions of the U.P. Municipalities Act, 1916.

5. The grievance of the petitioner is that the respondent no.1 has availed the benefit of provident fund under the scheme whereby contribution to his fund was 12 ½ % of his wages and the contribution of the employer was 6 ½ %.

6. The respondent no.1 having already availed the scheme, therefore, the petitioner has submitted that the gratuity cannot be granted in favour of the respondent no.1.

7. The petitioner has submitted that the respondent no.1 having availed the benefit, moved an application before the controlling authority under the Act purported to be under Section 7 of the Act, which was registered as Gratuity Case No. 7 of 1983 before respondent no.2. He claimed a sum of Rs. 16,840/- towards the amount of gratuity payable to him by the petitioner under the Act.

8. The petitioner filed its objections/written statement in the Gratuity Case No. 7 of 1983 denying the claim of respondent no. 1 stating therein that the provisions of the Payment of Gratuity Act were not applicable to the employees of the petitioner. The same is pending before the respondent no.2.

9. The respondent no.2 has passed the order on 31.10.1984 holding that by virtue of Central Government Notification dated 08.01.1982 published in the Central Government Gazette on 23.01.1982, the provisions of the Gratuity Act have been extended to the local bodies and the respondent no.2., therefore, is entitled for the said amount.

10. The petitioner has filed an appeal against the said order and the appeal was registered as Gratuity Appeal No. 65 of 1985 along with the application for condonation of delay. The application was rejected, hence the present writ petition has been filed.

11. Both the courts below have fond that the respondent no.1 was entitled for the gratuity in view of the notification dated 08.01.1982. I do not find any illegality in the order impugned so as to interfere under Article 226/227 of the Constitution of India.

12. Writ petition lacks merit and is rejected. No order as to costs.

(Rajesh Tandon, J.)

24.08.2006
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